

Readopt with amendments He-W 620.01, effective 4-22-08 (Document #9136), as amended effective 1-25-12 (Document #10078), as amended effective 3-24-16 (Document #11058), cited and to read as follows:

PART He-W 620 ASSET TRANSFERS

He-W 620.01 Asset Transfers.

- (a) Pursuant to RSA 167:4, I(b), a transfer of assets shall be considered to have been made when:
- (1) Action is taken that reduces or eliminates an individual's ownership or control of such assets;
 - (2) Another person has been given access to the asset through joint ownership and any action is taken, either by the individual or by any other person, that reduces or eliminates such individual's ownership;
 - (3) An instrument to transfer title at some future date has been completed by the individual who is applying for or receiving assistance and delivered to the individual who is to receive title;
 - (4) An individual who is applying for or receiving financial assistance has transferred or transfers title or ownership of an otherwise excluded home to another individual or entity, including a home, which has become income producing;
 - (5) An individual places assets into an irrevocable trust or similar legal device, including an annuity;
 - (6) An individual applying for or receiving financial assistance obtains a reverse mortgage, a home equity conversion mortgage, or similar loan on an otherwise excluded home or other real property and transfers the proceeds to another individual;
 - (7) An individual applying for or receiving financial assistance converts a countable asset; or
 - (8) An individual is entitled to an asset but does not receive the asset because of action:
 - a. By the individual or the individual's spouse;
 - b. By a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or such individual's spouse; or
 - c. By any person, including any court or administrative body, acting at the direction or upon the request of the individual or such individual's spouse.
- (b) Actions which would cause income or resources not to be received shall include but not be limited to:
- (1) Irrevocably waiving pension income or any other form of income;
 - (2) Waiving an inheritance;

(3) Not accepting or accessing injury settlements, judgments, or court awards;

(4) Tort settlements which are diverted by the defendant into a trust or similar device to be held for the benefit of the plaintiff; or

(5) Refusal to take legal action to obtain a court ordered payment that is not being paid, such as child support or alimony, unless the individual is being, has been, or is at risk of being battered or subjected to extreme cruelty as described in 42 USC 608(a)(7)(c) and is corroborated by the documentation described in He-W 602.10(a)(1)b.1.

(c) For individuals applying for or receiving financial assistance, the department of health and human services (DHHS) shall evaluate asset transfers to determine if the individual derived fair market value, as defined in He-W 601.04(b), from the transfer.

(d) DHHS shall evaluate the transfer to determine if the individual derived fair market value, as defined in He-W 601.04(b), whenever an individual applying for or receiving financial assistance has transferred, assigned, or disposed of title or ownership of an otherwise excluded home to another individual or entity.

(e) Asset transfers in which the individual receives fair market value shall require no further evaluation for asset transfer.

(f) For an asset to be considered transferred for fair market value or to be considered to be transferred for valuable consideration, the compensation received for the asset shall be in a tangible or otherwise assessable form with intrinsic value. A transfer of assets for love and consideration, or similar reasons, shall not be considered to be a transfer for fair market value.

(g) Although relatives may legitimately be paid for providing care, a transfer of assets to a relative for care provided in the past shall not be a transfer for fair market value. It shall be assumed that services provided for free in the past were intended to be provided without compensation unless it can be rebutted with tangible evidence that a compensation arrangement had been agreed to in writing at the time services were provided.

(h) When determining whether an individual has received fair market value for a transfer when a life estate has been established, the division shall:

(1) Determine what the fair market value of the asset was at the time of transfer;

(2) Take into account the individual's age at the time of the transfer; and

(3) Calculate the value of the life estate using the life estate tables found in the Supplemental Security Income (SSI) Program Operations Manual System (POMS), section SI 01140.120 as follows:

a. The life estate value shall be established by multiplying the market value of the asset by the life estate factor that corresponds to the individual's age at the time of the transfer;

b. The value of the life estate shall be subtracted from the value of the asset transferred; and

c. The difference between the value of the life estate and the amount the individual was reimbursed for the remainder interest shall be the portion of the asset transferred for less than fair market value.

(i) When determining whether an individual or spouse has received fair market value for a transfer of assets into an annuity, DHHS shall:

- (1) Determine the fair market value of the asset at the time of transfer into the annuity;
- (2) Determine if the expected return on the annuity is commensurate with a reasonable estimate of the life expectancy of the beneficiary in order to determine whether the annuity is actuarially sound;
- (3) Use the life expectancy tables published by the office of the chief actuary of the social security administration;
- (4) Determine that the individual has received fair market value for the annuity if the average number of years of expected life remaining for the individual coincides or exceeds the life of the annuity; and
- (5) Determine that the individual did not receive fair market value for the annuity if the average number of years of expected life remaining for the individual is less than the life of the annuity.

(j) The background information of the asset transfer shall be evaluated further to determine if assets might have been transferred for purposes of qualifying for financial assistance, if DHHS determines that the individual did not receive fair market value from the transfer.

(k) Factors to be evaluated in assessing asset transfers shall include:

- (1) Timeframes between the transfer of assets and the date of application;
- (2) The individual's health at the time of the transfer; and
- (3) The individual's economic situation at the time of the transfer.

(l) The transfer shall be considered questionable if the evaluation of background information of the transfer suggests that the individual transferred assets for purposes of qualifying for financial assistance or results in qualifying earlier than otherwise would have been possible if the individual had retained all of the asset(s).

(m) The individual shall provide additional information and documentation to demonstrate that assets were not transferred for purposes of qualifying for assistance, if the transfer is considered questionable.

(n) Reasons for transferring assets for purposes other than qualifying for assistance shall include:

- (1) The individual transferred the asset to prevent foreclosure or sale of the asset by the lien holder, thus preventing total loss of the asset;

- (2) The individual transferred the asset for self-support because the individual's income and resources were insufficient to meet basic needs or to maintain upkeep of the asset, such as taxes and repairs, and the individual's basic needs were provided for in return for the transfer, or the individual lived off the proceeds of the asset;
 - (3) The individual transferred the asset to meet the terms of a written agreement, including debts arising from such agreement;
 - (4) The individual transferred the asset to meet the terms of an oral agreement, including debts arising from such agreement; or
 - (5) The individual is not able to afford to take the necessary action to obtain the asset or the cost of obtaining the asset is greater than the asset is worth, resulting in a case of failure to cause assets to be received.
 - (6) The individual is being, has been or is at risk of being, battered or subjected to extreme cruelty as described in 42 USC 608(a)(7)(c) and as corroborated by the documentation described in He-W 602.10(a)(1)b.1.
- (o) The burden of proof for substantiating the fact that assets were not transferred for purposes of qualifying for assistance shall rest with the individual.
- (p) If the individual refuses or fails to prove that assets were not transferred for purposes of qualifying for financial assistance, DHHS shall determine that assets were transferred for the purposes of qualifying for assistance and shall deny financial assistance:
- (1) For 60 months from the date of the transfer to an irrevocable trust when the principal is not available to the individual; and
 - (2) For 36 months from the date of all other transfers.
- (q) A penalty shall not be assessed for transfers of assets for less than fair market value under any of the following circumstances:
- (1) The individual intended and attempted to dispose of the asset either at fair market value, or for other valuable consideration, and circumstances caused the individual to transfer the asset for less than fair market value;
 - (2) The individual transferred the assets for a purpose other than to qualify for financial assistance; or
 - (3) All of the assets transferred for less than fair market value have been returned to the individual.
- (r) Individuals claiming that circumstances caused the asset to be transferred for less than fair market value pursuant to (q)(1) above, shall provide documentation of:
- (1) The individual's attempt to dispose of the asset at fair market value, or for other valuable consideration; and
 - (2) The value at which the asset was disposed.

(s) Individuals claiming that assets were transferred for a purpose other than to qualify for financial assistance pursuant to (q)(2) above, shall provide documentation of:

- (1) The specific purpose for which the asset was transferred; and
- (2) The reason it was necessary to transfer the asset for less than fair market value.

(t) If a penalty was assessed for transferring an asset for less than fair market value and the asset was returned to the individual, then DHHS shall generate a retroactive adjustment back to the beginning of the penalty period if the individual met all other eligibility criteria.

Readopt with amendments He-W 656.05, effective 3-24-16 (Document #11058), to read as follows:

He-W 656.05 Real Property Resources.

(a) For the adult categories of financial assistance, real property resources shall be treated as follows:

- (1) The home occupied by the individual shall not be counted when determining eligibility for adult categories of financial assistance;
- (2) An unoccupied home shall not be counted during periods of temporary absence such as short term hospitalization or institutionalization;
- (3) Income-producing property shall not be counted;
- (4) Any real property not otherwise excluded shall not be counted if it is necessary as the residence for the individual's spouse, minor child, or disabled child;
- (5) One burial plot per assistance group member shall not be counted; and
- (6) The equity value of real property which is not specifically excluded above shall be counted as a resource when determining eligibility for adult categories of financial assistance.

(b) For adult categories of financial assistance, the assistance group shall take action to dispose of the property within 6 months of being notified by the department of health and human services (DHHS) that the property must be liquidated, and:

- (1) The equity value of the property shall not be counted during the disposal period; and
- (2) The disposal period shall be extended as long as:
 - a. The individual verifies that action has been taken to sell the property and that there are valid reasons for inability to sell the property; or
 - b. The individual's hospitalization or institutionalization, although long term, is not expected to be permanent and it is likely that the individual will return to the home.

(c) If disposal does not occur within the disposal period, as specified in (b) above, financial assistance shall be denied or terminated.

(d) For the FANF category of financial assistance, disposal of real property shall be treated as follows:

(1) The assistance group shall take action to dispose of the property within 6 months of being notified by DHHS that the property must be liquidated;

(2) Individuals shall have an additional 3 months to dispose of excess unoccupied real property, when the individual verifies that he or she has made a good faith effort to sell the property;

(3) The equity value of the property shall not be counted during the disposal period described in (1) and (2) above; and

(4) When the property is sold, the net proceeds from the sale of the property shall count as a lump sum resource.

APPENDIX

<u>Rule</u>	<u>Federal Reg./RSA</u>
He-W 620.01	RSA 161:4-a, II; RSA 167:3-c, I; RSA 167:4, I(b)
He-W 656.05	RSA 161:4-a, II; RSA 167:3-c,I; RSA 167:81; 45 CFR 233.20(a)(3)(i)(B)(5)